

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

WESLEY GILLESPIE, Individually, :
: .
Plaintiff, :
: .
v. : Case No. 2:12-cv-12146
: .
VOIGHT ENTERPRISES, INC :
A Domestic Corporation :
: .
Defendant. :
: / :

COMPLAINT

Plaintiff, Wesley Gillespie (hereinafter “Plaintiff”), hereby sues the Defendant, Voight Enterprises, Inc, A Domestic Corporation (hereinafter “Defendant”), for Injunctive Relief, and attorney’s fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. §12181 *et seq.* (“ADA”), and for damages pursuant to the Michigan Persons With Disabilities Civil Rights Act (“PDCRA”), MCL 37.1101 *et. seq.* In support thereof, Plaintiff states:

1. This action is brought by Wesley Gillespie, and all persons similarly situated, pursuant to the enforcement provision of the Americans With Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12188(a) and the Michigan Persons with Disabilities Civil Rights Act (“PDCRA”), MCL 37.1101 *et. seq.*, against the owners and/or operators of Woodhaven Lanes.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343, which governs actions that arise from the Defendant’s violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §12181 *et seq.* See also 28 U.S.C. §2201 and §2202.

3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1337(a) over Plaintiff's State claim as violations of the PDCRA arise from the same facts and circumstances that give rise to Plaintiff's ADA claim.

4. Venue is proper in this judicial district and division. Defendant does business in the State of Michigan, and all of the acts of discrimination alleged herein occurred in this judicial district and division.

5. Plaintiff Wesley Gillespie is a resident of Woodhaven, Wayne County, Michigan, uses a wheelchair, and is an individual with a disability within the meaning of ADA, 42 U.S.C. 12102(2), 28 C.F.R. 36.104, and MCL 31.1103.

6. Plaintiff Wesley Gillespie is substantially limited in performing one or more major life activities, including but not limited to, walking, standing, grabbing, grasping and/or pinching.

7. Plaintiff Wesley Gillespie is a frequent patron of Woodhaven Lanes, located at 20000 Van Horn Road, Woodhaven, Wayne County, Michigan, 48183.

8. The Woodhaven Lanes is a place of public accommodation within the meaning of Title III of the ADA, 42 U.S.C. 12181, 28 C.F.R. 36.104, and MCL 37.1301.

9. Defendant owns, leases, leases to, or operates the Woodhaven Lanes, and is responsible for complying with the obligations of the ADA and the PDCRA.

COUNT I

VIOLATION OF THE ADA

10. Plaintiff realleges paragraphs one (1) through nine (9) of this Complaint and incorporates them here as if set forth in full.

11. Plaintiff has visited the property which forms the basis of this lawsuit and plans to return the property in June 2012 to avail himself of the goods and services offered to the public at the property.

12. There are numerous architectural barriers present at Woodhaven Lanes that prevent and/or restrict access by Plaintiff, in that several features, elements, and spaces of Woodhaven Lanes are not accessible to or usable by Plaintiff, as specified in 28 C.F.R 36.406 and the Standards for Accessible Design, 28 C.F.R., Pt. 36, Appendix A ('the Standards').

13. Elements and spaces to which there are barriers to access at Woodhaven Lanes include, but are not necessarily limited to:

- a. There are built up curb ramps that project into vehicular lanes of traffic, which create a dangerous condition to an individual in a wheelchair.
- b. The ramp at the property does not provide any edge protection or side flares, thus creating a dangerous condition to an individual in a wheelchair.
- c. There are changes in levels of greater than $\frac{1}{2}$ inch, which create a dangerous condition to an individual in a wheelchair.
- d. There are rises at the thresholds of the entrances in excess of $\frac{1}{2}$ inch, making it extremely difficult to access the property.
- e. There is no latch side clearance inside the public restroom so that an individual in a wheelchair would be able to exit without assistance.
- f. There are designated accessible parking spaces that do not have any access aisles so that an individual in a wheelchair can exit their vehicle.

g. The public restroom does not have a compliant toilet so that an individual in a wheelchair can utilize it.

h. There are no compliant grab bars in the public restroom so that an individual in a wheelchair can utilize the facility.

i. The water closets in the public restroom are inaccessible to an individual in a wheelchair.

j. The dispensers in the public restroom are located too high for an individual in a wheelchair to utilize.

k. The mirrors in the public restroom are located too high for an individual in a wheelchair to utilize.

l. The interior of the property lack permanent signage indicating disabled use spaces, so that an individual in a wheelchair does not know what is accessible.

m. There is no signage at the public restroom designating where an individual in a wheelchair is to go.

n. There are counters throughout the facility that are higher than 36", making it inaccessible to an individual in a wheelchair.

o. The dining area at the facility does not have any accessible tables or areas for an individual in a wheelchair to utilize.

14. The discriminatory violations described in paragraph 13 of this Complaint were personally encountered by Plaintiff. The Plaintiff, and all other mobility-impaired and grasping-impaired individuals similarly situated have been denied access to, and have been denied the benefits of, services, programs and activities of the Defendants' buildings and facilities, and have

otherwise been discriminated against and damaged by the Defendants because of the Defendants' ADA violations, as set forth above.

15. The Plaintiff, and all others similarly situated, will continue to suffer such discrimination, injury and damage without the immediate relief provided by the ADA as requested herein. The Plaintiff, and all other individuals similarly situated, have been denied access to, and have been denied the benefits of services, programs and activities of the Defendants' buildings and its facilities, the opportunity to use such elements, and have otherwise been discriminated against and damaged by the Defendants because of the Defendants' ADA violations, as set forth above.

16. Plaintiff has standing to sue for every barrier to access for the mobility-impaired and grasping-impaired that exists on the subject premises. Wesley Gillespie has standing to require that all barriers to access on the property for the mobility-impaired and grasping-impaired are corrected, not merely only those Wesley Gillespie personally encountered.

17. Defendants' failure to remove the architectural barriers identified in paragraph thirteen (13) constitutes a pattern or practice of discrimination within the meaning of 42 U.S.C. 12188 (b)(1)(B)(i) and 28 C.F.R. 36.503 (a).

18. It would be readily achievable for the Defendant to remove the architectural barriers identified above.

19. Defendant is required to remove the existing architectural barriers to the physically disabled when such removal is readily achievable for its place of public accommodation that have existed prior to January 26, 1992, 28 CFR 36.304(a); in the alternative, if there has been an alteration to Defendant's place of public accommodation since January 26, 1992, then the Defendant is required to ensure to the maximum extent feasible, that the altered portions of the

facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally, if the Defendant's facility is one which was designed and constructed for first occupancy subsequent to January 26, 1993, as defined in 28 CFR 36.401, then the Defendant's facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.

20. The Defendant has discriminated against Plaintiff by denying him access to, and full and equal enjoyment of, the goods, services, facilities, privileges, advantages and/or accommodations of the buildings, as prohibited by 42 U.S.C. § 12182 et seq. and 28 CFR 36.302 et seq.

21. Defendant continues to discriminate against the Plaintiff, and all those similarly situated, by failing to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities.

22. Wesley Gillespie has a realistic, credible, existing and continuing threat of discrimination from the Defendants' non-compliance with the ADA with respect to this property as described, but not necessarily limited to, the allegations in paragraph 13 of this Complaint. Plaintiff has reasonable grounds to believe that he will continue to be subjected to discrimination in violations of the ADA by the Defendants.

23. Plaintiff is aware that it will be a futile gesture to re-visit the property until it becomes compliant with the ADA, unless he is willing to suffer further discrimination.

24. Plaintiff is without an adequate remedy at law and is suffering irreparable harm. Plaintiff has retained the undersigned counsel and is entitled to recover attorney's fees, costs and litigation expenses from the Defendant pursuant to 42 U.S.C. § 12205 and 28 CFR 36.505.

25. Notice to Defendant is not required as a result of the Defendant's failure to cure the violations by January 26, 1992 (or January 26, 1993, if Defendant has 10 or fewer employees and gross receipts of \$500,000 or less). All other conditions precedent have been met by Plaintiffs or waived by the Defendant.

26. Pursuant to 42 U.S.C. § 12188, this Court is provided with authority to grant Plaintiff Injunctive Relief, including an order to require the Defendant to make the property readily accessible and useable to the Plaintiff and all other persons with disabilities as defined by the ADA; or by closing the facility until such time as the Defendant cures its violations of the ADA.

COUNT II

VIOLATION OF THE PDCRA

27. Plaintiff realleges paragraphs one (1) through twenty-six (26) of this Complaint and incorporates them here as if set forth in full

28. The Defendant has discriminated against Plaintiff by denying him the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of a disability, as prohibited by MCL 37.1302.

29. Plaintiff has desired and attempted to enjoy the goods and services at Woodhaven Lanes as a customer. He has been prevented from doing so due to the existing architectural barriers at the property. As a result, he has been distressed and inconvenienced thereby, and is entitled to monetary damages for his injuries, as provided for in MCL 37.1606.

30. As a result of being denied full access to the property, Plaintiff has suffered, and will continue to suffer, emotional distress, humiliation, anxiety, anger, a loss of enjoyment of life, and other consequential and incidental damages.

PRAYER FOR RELIEF

31. Because Defendant has engaged in the acts and practices described above, Defendant has violated the law as alleged in this Complaint and unless restrained by this Honorable Court, Defendant will continue to violate the Constitution and laws of the United States of America, and the State of Michigan, and will cause injury, loss and damage to the Plaintiff, and all others so similarly situated.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare that Defendant has violated title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq, 28 C.F.R. pt. 36, and the Michigan Persons With Disabilities Civil Rights Act (“PDCRA”), MCL 37.1101 *et. seq.*
 - i. by failing to bring Woodhaven Lanes into compliance with the Standards where it is readily achievable to do so; and
 - ii. by failing to take other readily achievable measures to remove architectural barriers to access when it is not readily achievable to comply fully with the Standards.
- B. Order Defendant:
 - i. to make all readily achievable alterations to the facility; or to make such facility readily accessible to and usable by individuals with disabilities to the extent required by the ADA;
 - ii. to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford all offered goods, services,

facilities, privileges, advantages or accommodations to individuals with disabilities

C. Award damages to Wesley Gillespie who has been aggrieved and injured by the illegal acts of discrimination committed by Defendant;

D. Award attorney's fees, costs and litigation expenses pursuant to 42 U.S.C. § 12205 and MCL 37.1606.

E. Order such other appropriate relief as the interests of justice may require.

Respectfully Submitted,

By: /s/ Pete M. Monismith

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